

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**APR 05 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BRIAN KEITH WOODS,

Defendant-Appellant.

No. 05-10494

D.C. No. CR-S-97-00291-LDG

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Lloyd D. George, District Judge, Presiding

Argued and Submitted March 16, 2006  
San Francisco, California

Before: GOODWIN, REINHARDT, and HAWKINS, Circuit Judges.

Brian Keith Woods (“Woods”) appeals the district court’s finding, on remand from this court, that it was just and practicable to apply the amended Rule 33 of Criminal Procedure and deny his motion for new trial based on newly discovered evidence as untimely.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

The Supreme Court has ordered courts to apply the amended version of Rule 33 “insofar as just and practicable.” Order Adopting and Amending the Federal Rules of Criminal Procedure, 177 F.R.D. 531 (Apr. 24, 1998). Woods had more than thirty-one months from the time the amended Rule 33 took effect to his deadline under the amended Rule in which to file his motion. Considering the amount of time Woods had to file his motion under the amended Rule 33, the district court did not abuse its discretion in determining it was just and practicable to apply the amended rule. *Cf. United States v. Ross*, 372 F.3d 1097, 1105 & n.6 (9th Cir. 2004) (not just and practicable to apply amended Rule 33 where the defendant had only four months between the effective date and deadline).

AFFIRMED.